

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2877 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

Questions nos.1 to 5 : No

SAVITABEN KALIDAS MAHIJIBHAI PATEL

Versus

SOMABHAI DHANABHAI VAGHARI DECD.

Appearance:

MR JITENDRA M PATEL for Petitioners

SERVED Respondent No. 1

Shri M.R. Raval, ASST.GOVERNMENT PLEADER for
Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/10/96

ORAL JUDGEMENT

This petition under Article 227 of the Constitution challenges the judgment and order dated 28th December 1984 passed by the Gujarat Revenue Tribunal in

TEN B.A. 1493/82 by which the Tribunal has confirmed the order dated 22nd June 1982 passed by the Deputy Collector, confirming the order dated 20th October 1979 passed by the Agricultural Land Tribunal and Mamlatdar in Tenancy Case No.32 PP/8/79 under the provisions of sec.32 PP of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act" for brevity).

2. The facts giving rise to the present petition, briefly stated are as under :

The petitioner Kalidas Mahijibhai Patel was the original owner of the land in question admeasuring 32 gunthas bearing survey no.2151/2 in the sim of village Ode, taluka Anand. According to the petitioner, the above land was in personal cultivation of Kalidas Mahijibhai since 1950. Said Kalidas expired in or about 1963. Petitioner no.1 - Savitaben is the widow of said deceased Kalidas. Other petitioners are the children of said deceased Kalidas.

3. In respect of the land in question proceedings were initiated under sec.32G of the Act. In the said proceedings, original respondent no.1 - Somabhai Dhanabhai Vaghri, who expired during the pendency of this petition and is represented by his heirs, had stated that he had not cultivated the land as a tenant, and he was not willing to purchase the land. The Agricultural Land Tribunal and Mamlatdar had, therefore, passed an order dated 9th August 1963 to the effect that the purchase had become ineffective. Nothing appears to have happened thereafter. According to the petitioners, deceased Kalidas Mahijibhai and upon his death the present petitioners have been personally cultivating the land.

4. However, in the year 1979 deceased Somabhai Dhanabhai was asked to give an application under sec.32PP of the Act for purchasing the above land. In the said proceedings also Somabhai Dhanabhai stated that he had not cultivated the land as a tenant and he was not ready and willing to purchase the land. In these proceedings the petitioners also contended that Somabhai Dhanabhai was not a tenant of the land and that the petitioners never knew that the order of ineffective purchase was passed. Ultimately, the Agricultural Land Tribunal and Mamlatdar, Anand passed an order that since the purchase had become ineffective in the proceedings under sec.32G and since the petitioners or their predecessor had not obtained any order against the said order of ineffective purchase passed in 1963, further proceedings shall be taken under sec.32PP of the Act and that the land shall

be forfeited to the Government.

5. Aggrieved by the above order, the petitioners preferred an appeal before the Deputy Collector (Appeals), Kheda. The Appeal was also dismissed on the ground that the order of ineffective purchase was already passed in the year 1963 and the mutation entry for the same was also made in 1966 and that in the proceedings under sec.32PP it was not open to the petitioners to contend that Somabhai was not a tenant of the land in question. Hence the Deputy Collector dismissed the appeal.

6. Aggrieved by the above order, the petitioners preferred the above numbered Revision Application before the Tribunal. At the hearing of the Revision Application also the learned advocate for the petitioners contended that since Somabhai Dhanabhai had stated in both in the inquiries that he was not a tenant in respect of the land in question, the Agricultural Land Tribunal and Mamlatdar had no jurisdiction to pass the order of ineffective purchase under sec.32G of the Act and that the said order was, therefore, a nullity and that it was open to the petitioners to set up such a defence even in collateral proceedings.

7. The Tribunal accepted the petitioners' case that Somabhai Dhanabhai had stated in the present inquiry that he never cultivated the land in question as a tenant and that he had taken similar stand in the previous inquiry and it can be presumed that previously the Mamlatdar was not justified in holding that the purchase of land had become ineffective. The Tribunal held in terms that there would be no tenant on the land and that the decision of the Mamlatdar and ALT may become without jurisdiction. However, the Tribunal refused to grant any relief to the petitioners only on the ground that the previous decision of the Mamlatdar regarding ineffective purchase under sec.32G had not been challenged so far and that the petitioners were bound by the said order. Accordingly the Tribunal dismissed the Revision Application.

8. At the final hearing of the petition today, Mr.J.M. Patel, learned counsel for the petitioners submitted that since Somabhai was admittedly not a tenant in respect of the land in question, the Agricultural Land Tribunal and Mamlatdar had no jurisdiction to pass an order of ineffective purchase under sec.32G and therefore, that order was a nullity and that it was open to the petitioners to set up the defence of nullity of

the ALT & Mamlatdar's order under sec.32G in any proceedings including the present proceedings under sec.32PP of the Act.

9. Mr. Patel further submitted that in any view of the matter apart from any such general principle of effect of nullity, in the case of Patel Sureshbhai Jashbhai v. Patel Satabhai Mathurbhai, AIR 1983 SC 648, in the context of these very provisions of the Act itself, the Supreme Court has held that even if an order of ineffective purchase is passed in the proceedings under sec.32G of the Act, it is still open to the landlord to contend in the proceedings under sec.32PP of the Act that the concerned person was not a tenant on April 1, 1957 (i.e. the tillers' day).

10. In view of the aforesaid clear pronouncement of the Supreme Court, the Tribunal and the subordinate revenue authorities clearly erred in holding that in the proceedings under sec.32PP of the Act it was not open to the petitioners to contend that Somabhai Dhanabhai was not a tenant in respect of the land in question merely because the order of ineffective purchase under sec.32G of the Act was not challenged by the petitioners or by their predecessor. In view of the clear finding of the Tribunal that Somabhai Dhanabhai himself has stated that he was not a tenant of the disputed land and that previously Mamlatdar was not justified in holding that the purchase of the land had become ineffective, the basic jurisdictional condition of the relationship of landlord and tenant between deceased Kalidas Mahijibhai and deceased Somabhai Dhanabhai was not established. The proceedings under sec.32PP of the Act are, therefore, required to be quashed.

11. In view of the aforesaid discussion, the petition is allowed. The impugned orders at Annexures 'A', 'B' and 'C' are quashed. Rule is made absolute. No order as to costs.

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